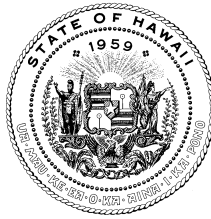


LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

**HAWAII ISLAND BURIAL COUNCIL
MEETING MINUTES**

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DATE: THURSDAY, JUNE 15, 2006
TIME: 9:00 AM
PLACE: NATURAL ENERGY LABORATORY HAWAII AUTHORITY
73-4660 QUEEN KA'AHUMANU HIGHWAY
KAILUA-KONA, HAWAII

ATTENDANCE:

HIBC MEMBERS: Charles Young, Chair
Ulu Sherlock, Vice-Chair
Ron Dela Cruz, Kohala
Leningrad Elarionoff, Kohala
Pele Hanoa, Ka'u
Roger Harris
Roy Helbush
Ku Kahakalau, Hamakua
Kaleo Kualii, Kona
Cynthia Nazara, Kona
Dutchie Saffrey, Puna

Absent: Anna Cariaga, Ka'u
Jacqui Hoover

SHPD Staff: Keola Lindsey, SHPD- History and Culture Branch
Julie Taomia, SHPD- Archaeology Branch
Linda Chow, Deputy Attorney General

Guests:

Ruby McDonald	Richard Parrish, Jr.
Nani Langridge	Haili Kailiwai-Ray
Juanna Pi'iali'i	Debbie Kailiwai-Ray
Olivia Nenio	John Kailiwai
Arthur Mahi	Mahana Gomes
Iwalani Arakaki	Lei Lightner
Kay Dixon Nichols	Rodney Imming
Debbie Young	Norman Gonsalves
Keoni Alvarez	Jean Rasor
Aileen Alvarez	Curtis Tyler

I. OPENING REMARKS

HIBC Chair Charles Young (Young) called the meeting to order at 9:12 a.m.

Kupuna Pele Hanoa (Hanoa) offered a pule.

The HIBC members, SHPD staff and the Deputy Attorney General introduced themselves to the community members in attendance.

II. APPROVAL OF THE May 18, 2006 HIBC MEETING MINUTES

A motion was made to approve the May 18, 2006 HIBC meeting minutes (Elarionoff/Sherlock)

Vote: All in favor

III. BUSINESS

A. LINEAL DESCENT CLAIM

**PU'UANAHULU AHUPUA'A, NORTH KONA DISTRICT, HAWAI'I ISLAND
TMK (3) 7-1-005:001**

Information/Recommendation/Determination: Discussion and testimony on the lineal descent claim filed by Ms. Debralee Kailiwai-Ray. Department recommendation to the Hawai'i Island Burial Council (HIBC) whether to recognize the applicant as a lineal descendant to identified burials. HIBC determination whether to recognize the applicant as a lineal descendant to the subject burials.

Keola Lindsey (Lindsey) referred the HIBC to a June 8, 2006 memorandum which recommended Ms. Debralee Kailiwai-Ray (Kailiwai-Ray) be recognized as a lineal descendant to an identified burial on the subject TMK parcel. The SHPD's review indicates that through the years multiple informants representing the families of Pu'unanahulu have provided testimony both orally and in written form regarding the identification of an individual known as Ha'o Li'ili'i aka Ha'o Opio aka Waipa Ha'o Jr. aka Ha'o Jr. who is believed to be buried in this location.

Lindsey said Kailiwai-Ray has submitted genealogical information which confirms her lineal descent from Ha'o Li'ili'i. The combination of the informant testimony and Kailiwai-Ray's genealogical information resulted in the Department recommending she be recognized as a lineal descendant.

There was also the issue of a draft archaeological inventory survey for this TMK that had been submitted to the Department and there were concerns that the description of the burial site within this draft was not consistent with a summary of a site visit with the families of Pu'unanahulu which identified the site which is now known as Site 24850. Staff has discussed this matter with the archaeological consultant who submitted the draft and they revised the draft to ensure the description of the site is consistent with the informant testimony detailed in a letter from Ms. Mahana Gomes.

Lindsey said that an additional concern he has been made aware of this morning is that the current boundaries of Site 24850 are in question, and the boundaries may extend onto adjacent TMK parcels- this is another issue for the Department to review. However, there is a site with identified

burials within the site and the lineal recognition can still occur. The boundaries of the site will have to be confirmed.

Debralee Kailiwai-Ray (Kailiwai-Ray) introduced herself to the HIBC. Kailiwai-Ray said she will be reading her written testimony into the record and has attached additional oral interview testimony.

Aloha Burial Council Chairman and Members:

I'm here providing testimony on my lineal descent claim to an identified burial within Site 24850 Pu'uana'hulu Ahupua'a, North Kona District, Hawai'i Island TMK (3) 7-1-005:001. I have submitted information in my last testimony before HIBC (Hawai'i Island Burial Council) on May 18, 2006 which supports this agenda item III A. I have brought today with my testimony documentation and pictures from:

- Puuanahulu, North Kona, Hawai'i Island, Archaeological Inventory Survey of TMK 7-1-05: multiple prepared for Puulani Ranch Inc., April 1997

- Puuanahulu and Puuwaawaa, Volume II by Kepa Maly of Kumu Pono Associates

I have attached a copy of my testimony and portion of a documented October 02, 1993 interview with Margie Kaholo Kailianu and Joseph "Iokepa" Makaai with Helen Wong Smith (hired historian with Puulani Ranch Inc.) and Kana'i Kapeliela (formerly of SHPD, State Historic Preservation Division, Burials Program). I highlighted the area which Auntie Margie points out her family burial. It is located north and approximately several feet away from Site 24850 possibly cradling between TMK (3) 7-1-005:001 and (3) 7-1-005:006:026. Auntie Margie's family burial does not have an assigned site number. As her family interview mentions, there are no markers due to bulldozing and alterations to her family burial and land before the 1993 interview. Auntie Margie, my father John Kailiwai and several ohana members do remember other burials in this same area. These burials are within Site 24850 and crosses over the perimeters of TMK (3) 7-1-005:001 into (3) 7-1-006:027 according to our informants. There are existing landmarks that have not yet been destroyed to locate Site 24850. It has taken over thirteen (13) years to receive my lineal descendancy to these burials, I do not have another 13+ years to assure the protection of Site 24850 and others which are right now vulnerable to further desecration and destruction.

Mahalo- Debralee Kailiwai-Ray

Kailiwai-Ray said it is hard to keep bringing this up, there has to be some closure.

Young asked Kailiwai-Ray if there are additional burial sites that have not been assigned a site number.

Kailiwai-Ray said there are and referred Young to the pictures she distributed.

Lindsey said the description of Site 24850 indicates multiple individuals buried within this location. Lindsey said if he is understanding Kailiwai-Ray correctly, the current boundaries do not include all the burials known in the area. Potentially the boundaries will have to be extended.

Leningrad Elarionoff (Elarionoff) said he does not like the last sentence in the June 8, 2006 memorandum because it says “...*the Department recommends Ms. Kailiwai-Ray be recognized as a lineal descendant to this identified burial within Site 24850.*” Elarionoff said this really limits it.

Young asked Kailiwai-Ray if she is claiming lineal to the other burials.

Kailiwai-Ray said it is a family cemetery.

Elarionoff said he feels if the HIBC takes action on the memorandum as it is written, it is not inclusive enough.

Young said it should say all burials within Site 24850.

Elarionoff said that would be more inclusive.

Kailiwai-Ray said there is more than just one burial.

Dutchie Saffrey (Saffrey) said that the HIBC should take action on the staff recommendation and then clarify the additional recognitions through a second action. Kailiwai-Ray has been waiting thirteen years for this. Saffrey said it will bring some closure to recognize her as a lineal descendant.

Deputy Attorney General Linda Chow (Chow) said the memorandum is the staff recommendation and the HIBC can take action that does not conform to the recommendation. Under the rules, a lineal descendant recognition is specific to an individual. There may be other burials within this site that have not been specifically identified. Nothing precludes the HIBC from coming back and making further determinations with regards to other burials within the site.

Elarionoff said he would recommend changing the last sentence of the June 8, 2006 staff memorandum to read “...Ms. Kailiwai-Ray be recognized as a lineal descendant to Site 24850”, if Kailiwai-Ray is willing to be that broad about it.

Pele Hanoa (Hanoa) said Kailiwai-Ray should be recognized as a lineal descendant to all the burials within this family cemetery and in Pu’uanahulu. That is where the family is from.

A motion was made to remove “...this identified burial...” from the last sentence of the June 8, 2006 SHPD staff memorandum. (Elarionoff/Harris)

Elarionoff asked Kailiwai-Ray how she felt about that.

Kailiwai-Ray said that this has taken so long, she is trying to keep it in perspective. Her daughter and sons are here. She wants them to understand. All she wants right now is to protect the burials. Kailiwai-Ray said she has heard recommendations before and it does not seem to be enough. What ever it takes to preserve the burials.

Hanoa said it is the kaumaha we have to carry. This has to stop, it has been going on for thirteen years.

Young said the motion is to remove the language from the staff memo and the HIBC will then recognize Kailiwai-Ray as a lineal descendant to all the burials within the site. The HIBC is not taking the staff recommendation.

Vote: All in favor.

A motion was made to recognize Kailiwai-Ray as a lineal descendant to all burials within Site 24850. (Sherlock/Hanoa)

Kaleo Kualii (Kualii) asked Lindsey that if the site extended off one TMK parcel and into another, would the site number stay the same.

Lindsey said the site would be identified by one number.

Vote: All in Favor.

Saffrey asked if the memo will be re-written to reflect the HIBC motions.

Chow said it will be reflected in the meeting minutes.

A motion was made to close this agenda item (Saffrey/Elarionoff).

Vote: All in Favor.

B. PU'ULANI RANCH DEVELOPMENT

PU'UANAHULU AHUPUA'A, NORTH KONA DISTRICT, HAWAII ISLAND

TMK (3) 7-1-005: MULTIPLE AND 7-1-006: MULTIPLE

Information/Recommendation: Discussion of the history of the Pu'ulani Ranch Development relative to the County of Hawaii's final subdivision approval for the development. Discussion of the identification of burial and cultural sites by the families of Pu'uanahulu. Discussion of archaeological reports related to the Pu'ulani Ranch development. HIBC recommendations to the Department and the County of Hawaii on actions that should be taken to identify and protect burial sites within the Pu'ulani Ranch development.

Lindsey said background information relative to burials within the Pu'ulani Ranch development was included in the HIBC's mail packet this month. It may not be an exhaustive set of documents, but it does provide general background.

Young said Pu'ulani Ranch received subdivision approval in 1993. Contingent on that County approval was that there would be a comprehensive burial treatment plan for Phase II of the development which was never accomplished.

Lindsey said that it is his understanding that the County of Hawaii is aware of these on-going issues.

Young said that at the May HIBC meeting, the HIBC passed a motion authorizing him to generate a letter to Chris Yuen. The contents of the letter basically request the County of Hawaii and Yuen stop all development within Pu'ulani Ranch until such time that the developer meets the requirement of subdivision approval which is a complete burial treatment plan which includes identification and protection for all the burials. Young said he hand delivered the letter to Yuen.

Yuen is on vacation this week, so he is not able to be at this meeting. It is the County's purview to stop further development until the subdivision requirements are met.

Elarionoff said a copy of the letter should be sent to the Mayor and the Corporation Counsel.

Young asked Lindsey to send a copy of the letter to those two parties.

Young said Yuen said the County will be taking action, but did not specify what that action will be. Young said the HIBC will invite Yuen to the July HIBC meeting.

Hailiopua Kailiwai-Ray (H. Kailiwai-Ray) read her written testimony:

*Welina mai kakou,
'O wau no 'o Hailiopua Kailiwai-Ray. Aia au ma ka papa 'umi. A hele au i ke kula ki'eki'e 'o Kealakehe. My name is Hailiopua Kailiwai-Ray. I am a seventh generation Native Hawaiian Homesteader and daughter of Debbie Kailiwai-Ray. I have come here before you in concern. As a child I was always brought up to do everything in a "pono" way. For those of you who don't understand much Hawaiian, pono means righteousness. The action that was taken on my great great grand uncle's homestead was point blank not pono. The processes and laws that should have protected this deemed "significant" site was ignored and what is left of this ignorance is nothing but remnants and debris. I close off this testimony with a poem I have written for you.*

*This land once stood lush and green
But now it's covered with hate and greed.
Houses go up.
My heart sinks down
This last paradise cannot be found.
I lower my head in disgrace
I allowed a part of my culture and heritage to be erased.
I close my eyes for just a second in time
Choking on my pride, I silent my cries.
No longer can I hold my voice.
Times up.
I have no choice.*

Thank you for allowing me to express my concern

Hailiopua Kailiwai-Ray

Saffrey said H. Kailiwai-Ray did an excellent job. The younger generation needs to be strong.

H. Kailiwai-Ray said she has seen her mother struggle through this process. It is hard to explain. She wants to see pono in the land and hopes when she gets older, she does not have to go through this.

Elarionoff said the older generation is passing the torch to the younger generation. Hold that torch high.

Kuali'i asked H. Kailiwai-Ray to be prepared for when her time comes.

Cynthia Nazara (Nazara) said it is important to see H. Kailiwai-Ray here today in support of her mother.

Ron Dela Cruz (Dela Cruz) said there are many challenges. Stay strong, 'onipa'a.

Roger Harris (Harris) said that after the last HIBC meeting in Pu'uana'hulu, it appears the County asked the developer to alter subdivision maps. Harris wondered what happened with that.

Kailiwai-Ray said nothing happened.

Harris asked if there are any pending burial treatment plans for Pu'ulani Ranch now.

Mahana Gomes (Gomes) said there are burial treatment plans for Phase III of Pu'ulani Ranch. A draft of that plan has been presented to the families and the SHPD. The developer would like to subdivide one large TMK parcel.

Harris asked if there are any pending in Phase I or II.

Gomes said not that they know of. Joe Kennedy's firm is working on the inventory survey and burial treatment plan for TMK (3) 7-1-005:001, also known as the "cistern lot".

Harris asked who the owner of that parcel is.

Gomes said the parcel was sold from Newell Bohnett to someone else.

Harris asked if the burials on the lot are safe.

Gomes said the lot was bulldozed.

Kailiwai-Ray said she believes the burials are still there, but the surface markers are gone.

Gomes said certain lot owners within Phase II have taken the initiative and created their own burial treatment plans.

Harris suggested working with the Pu'ulani Ranch Homeowners Association.

Gomes said right now, the Association President is Rob Woodward. Gomes said in the last few days she has been in email communication with Woodward and received a not so pleasant email from Woodward expressing surprise that this matter was on the HIBC agenda.

Harris supports working with the Planning Department which may force the Association to be more involved.

Young said there are legal issues that need to be addressed. Not meeting the subdivision requirements still need to be addressed. The destruction of the burials fall to the State for action. There is no burial treatment plan and the result is that the burials have been destroyed.

Chow said the best way to address the issue of subdivision compliance is to work with the County Planning Department.

Ku Kahakalau said that is moving forward. There is still the hewa from the past. If the law has been broken, there should be a mechanism to hold people accountable.

Chow said the State would have to investigate the violations.

Ulu Sherlock (Sherlock) said that the State needs to do a better job of monitoring the situation. There has been a lot of back and forth between the State and the County, but there are no results.

Sherlock said that Kailiwai-Ray has brought concerns regarding access to burials which have already been addressed through burial treatment plans. The access was to be provided. The landowners testified when the plan was before the HIBC that they would all work together. The burial covenant has not been recorded. This is a problem. Sherlock wants to know who is responsible for monitoring these issues.

Elarionoff said a letter should be sent to the Planning Director, Mayor and Corporation Counsel asking them to remedy this deteriorating situation.

Saffrey said the HIBC minutes reflect this situation. The current HIBC members need to get the history of this situation.

Chow said HIBC minutes are public record and are available.

Gomes said she would like to request those minutes from Lindsey and the SHPD.

Young said the HIBC can work with other Native Hawaiian organizations like OHA and Hui Malama to help the families.

Kuali'i asked if the families have been involved with the development planning process.

Kailiwai-Ray said her understanding is that the Phase III subdivision is on hold at the County. The date of that application is from around 1995.

Gomes said prior to Phase I and II, her grandfather Robert Keakealani took the developer to all the sites. Gomes said it is her understanding that Newell Bohnett still owns Phase III and has extended the option to sell to Eric Yanagihara (Yanagihara) and Bill Boyle (Boyle). Yanagihara and Boyle have hired the archaeologist to do the draft burial treatment plan. Yanagihara and Boyle have connected Gomes to the archaeologist to go onto the property and identify the sites. Gomes said the families are concerned about one site that has been identified. While Phase III has not been approved, there has been ground disturbance that has occurred. The families have not been able to go out and confirm whether the site was impacted by the ground disturbance. The archaeologist is just taking the families word that the site is there, but the grass is tall and there are piles of rocks. The families cannot confirm whether these are the grave markers that have been pushed.

Elarionoff said that the subdivision approval conditions for Phase II are the responsibility of the Planning Director, nobody else.

Gomes read her written testimony;

June 15, 2006

Aloha,

My name is Mahana Gomes. I am the great grand niece, my mother ShirleyAnn Keakealani is a grand niece, my grandfather Robert Keakealani is a nephew of the Maka'ai, Alapa'i, Aipia, Ha'o, Kaholo, Kahaikupuna and so on Ohana. I am a cousin of Debbie Kailiwai-Ray, who is also here today.

I am here today representing the Keakealani, Alapa'i and Ha'o Ohana of Pu'u Anahulu. As their spokesperson, I will share with you today our thoughts, our concerns, our testimony regarding the destruction of our ancestral burials and significant sites located on lands that are now part of a subdivision called Puu Lani Ranch. To name a few, the Henry Ha'o Homestead, site # 50-10-20-18483, the Harbottle Family Gravesite, site # 24849 and the gravesite located on TMK 7-1-05:001 for (to name a few) Ha'oli'ili'i and Makahuki, site #24850.

Like many others, the sites I have mentioned have a lot of history and significance for the Ohana of Pu'u Anahulu. The Henry Ha'o Homestead was not just the house site of an unknown people of the past, no it was the homestead of a man and families who are our blood relatives. To my mom, a grand uncle, to my cousin Debbie, a great grand uncle. I have uncles still alive today who have childhood memories of this homestead, of this man, of his family. Ha'oli'ili'i and Makahuki, are not just names of the past, or people from some time ago, no. Ha'oli'ili'i is Debbie's great grandfather. Makahuki is a grandmother to Aunty Majorie Kaholo (deceased) and a great grandmother to people still alive today.

The fact that these burials and significant sites no longer exist visually, whether destruction was deliberate or out of plain ignorance, we the Ohana cannot begin to express our feelings of loss, devastation and disgust. However, I am not here today to act as judge on actions past made, but I am here to fulfill our responsibility as lineal descendants by speaking into the decisions and actions yet to come.

Our responsibility to our ancestors is to do our best to make sure the destruction stops, never occurs again, and for those that have already been destroyed, find closure for them.

We the Ohana have had to verse ourselves with the current Burial Laws, Lineal Descendant Laws, the Subdivision Approval Process, the Grading and Grubbing Permit process, all of this to try our best to preserve what few things remain of our past, our history, our on going legacy. We have been exposed to emotions, conversations, situations that should not ever have occurred with all the different types of laws and processes the State of Hawai'i has in place. Why protocol is not or has not been followed in the past will remain actions of the past, however with all that we had to learn and stay on top of, we will not accept non-compliance of such processes, protocol, and or laws, going forward.

Here are suggestions the ohana would like to make and have on the record for you the Burial Council, for the State Historic Preservation Division and for the County of Hawaii Planning, Engineering and Public Works Departments:

- Work towards a more cohesive relationship. Meet monthly. Weekly whatever it takes to get all these different agencies to work together as one.

- Take a stand together to remedy all this nonsense that should not go on anymore.
- Internally amongst your agency let there be consistency. Every time positions are filled, or new board members or council members are put in place, let there be smoother transitions. No more of these same questions: When?How? and Who? Let this happen.

The ohana have continued to be a victim of a failing system. We are tired of coming time and time again to these types of meetings, presenting these types of testimonies. Having to site with archaeologists, time and time again for oral interviews, regarding our significant sites and burials at Puu Lani Ranch. Visiting our sites time and time again, only to see their destruction and nonexistence to the human eye. To see homes or coffee trees sitting or growing on top of these already known documented sites is disgusting for us.

We are aware that Phase III of Puu Lani Ranch burial treatment plans, etc have been put on hold. For the record, we the ohana do not support any burial treatment plans or permits for Phase III of Puu Lani Ranch. These matters in Phase I and II need to be resolved.

For the sites and burials already destroyed, they cannot be brought back, however no one has felt any pain for this destruction aside from us the ohana. This needs to change. Together all your agencies need to make sure action is taken against this individual or these individuals. Laws are in place is what we kept being told, well we would like to see them upheld, and proper punishment issued for those same laws broken. We will not accept, oh that's a hard one, to prove who did it or when, no that doesn't work for us anymore. Permits keep getting approved, homes keep going up.

An example of a cohesive relationship I'd like to share with you is that of our ohana and the Big Island Country Club Estates. If you drive through Puu Anahulu heading south. You will see on the mauka side Puu Lani Ranch you look makai and you will see Big Island Country Club Estates.

The families have worked with different developers for that project for many years. Our burials are secure, we have access, they have their golf course. They have even gone to the extent of trying to reclassify their land from Agriculture to Rural for their upcoming subdivision, abiding by the laws in place. Why should on one side of the road be so different and held to different standards and laws then the other?

In closing, we the ohana are very aware of how complicated this matter is. We are also aware that time is moving. When time moves things go forgotten, things, people age, but also when time moves the world calls this "Progress". We have had not seen any progress in this matter for the last 10 years. That is a shame. Together lets make progress happen. Together lets take a stand to stop this and to bring proper closure.

*Thank you for your time.
Mahana Gomes*

Kailiwai-Ray read her written testimony:

Aloha Burial Council Chairman and Members:

I'm here providing testimony on Agenda Item III B, Pu'ulani Ranch Development. I am a fifth generation Native Hawaiian Puuanahulu Homesteader and a lineal descendant to burials in Puuanahulu. My ohana occupied Puuanahulu since 1884. A homestead lease was issued to my

maternal grandfather Nelson Hao's paternal grandmother Kawaimaka Hao on August 04, 1903. Subsequently fee simple title to her was issued on April 15, 1915. My father, sister and I currently retain her interest in property owned in Puuanahulu.

Despite the history I provided, I'm beyond words on how all has been handled at Puulani Ranch by the process in place to protect our burials, the agencies and people involved. Personally it has affected my life, in such a way no one could imagine what it is like.

There are several points that need immediate attention:

- There is no access through the locked gates in Puulani Ranch.*
- Burial Treatment Plans (two that I know of which homes have been built) were approved in Puulani Ranch. No burial site maintenance as outlined in the Long Term Preservation Measures has been implemented. Who implements it? Our ohana are willing, we do not know the process or time frame to do so?*
- There has been no contact or coordination by owners after building their home to implement access or preservation measures.*
- I have not seen evidence as to burials covenant added into owners land deed assuring the long term preservation and protection of sites if sold to prospective buyers*

All these measures are in place, but how do we go about implementing it or making sure it is complied by the owners after the Burial Treatment Plans are approved? What good is all the work involved preserving and protecting our burials in the AIS, Burial Treatment Plans if the Long term Preservation Measures are not followed by the developer and/or owners? Help me find the answers. Among the chaos, I would like closure for our ohana now and for those past on. This should not be left like this and carried on to my children or the next generation to deal with.

*Mahalo,
Debralee Kailiwai-Ray*

Young suggested Gomes and Kailiwai-Ray forward their testimonies to Yuen at the County. Hanoa suggested sending the testimony to the Mayor as well.

Kahakalau asked how the families can be denied access.

Lindsey said he is not sure whether the families have contacted the lot owners and been told no or if the access agreement was never finalized.

Gomes said they do not know who to contact.

Young said the burial treatment plans were approved with access.

Chow said the State would have to initiate an enforcement action regarding the access, as long as access for lineal and cultural descendants to the burials was in the plan.

Harris said there have been at least four or five burial treatment plans for Pu'ulani Ranch that have come through the HIBC.

Kahakalau said there is no reason why the descendants should be denied access.

Chow said the SHPD should follow up on the access with a letter to the lot owners.

Kailiwai-Ray said the access code for the main gate changes all the time.

Gomes said that is where it would be helpful to work with the Homeowners Association with the backing of the HIBC to show what laws allow the families access.

Chow said the SHPD follow up letter should identify the problem and offer a solution which could be providing the Homeowners Association with a list of the descendants who should be provided access.

Young suggested having the July 2006 HIBC in Pu'uana'hulu and a site visit to Pu'ulani Ranch. All involved parties should be invited.

Elarionoff said the Planning Director has the power to take action on these issues.

Kuali'i said that the access and recordation of easements on property deeds are addressed in the burial treatment plans that have come before the HIBC.

Gomes asked if it is possible for the SHPD to confirm the burial sites in Phase III are still there if the developers are not willing to hire an archaeologist to do it. The grass is tall and there has been some ground disturbance. The burials were marked with stones that are now in piles. The grass needs to be cleared to see if the graves are still intact. There is no doubt that the iwi are still there.

Julie Taomia (Taomia) said the SHPD will have to approve the inventory survey. The SHPD can say that additional information or documentation is required.

Gomes would like confirmation that the grave markers are still in place or have been disturbed. This is the Harbottle Family Graves on TMK 7-1-005:6,7,8 and 66. The site is #24849.

Ruby McDonald (McDonald) said she has a timeline from 1990 for Pu'uana'hulu which details the chronology of events there. She can work with Lindsey on getting that to the HIBC. It shows the arrogance of the current landowner.

Curtis Tyler (Tyler) said there has been incredible testimony here this morning. As painful as this has been and will continue to be, persistence and the never give up attitude is critical. The only people that monitor these issues are the people themselves. It has been 16 years and we are still hearing the same thing. That is the kind of follow through these State agencies provide. It is time to stand up and say enough already.

McDonald said in December 1994, grading work on 6 or 7 lots occurred on Veterans Day weekend. Also in 1994, a March 6 letter from the SHPD went to the landowner saying if any grading work were to occur, the burial sites would have to be protected. Family burials were registered by the SHPD on TMK 7-1-005:12 and TMK 7-1-6:55, 57, 58, 61, 83, 116 and 128. The TMK may have changed. In May 1996, there was potential damage to several burials on TMK 7-1-6:various. In 1997 a site inspection to two burials on TMK 7-1-6:57 and 83. It goes on and on discussing these issues. There is also mention that if any disturbance occurs that the State will view it as intentional and a violation.

Kahakalau asked if the State is aware of these violations and has investigated them.

Lindsey said that he is not aware of any formal investigation being conducted.

Elarionoff asked if there is a statute of limitations.

Chow said no.

A motion was made that the SHPD immediately launch an investigation into intentional disturbances of previously known and unknown burials by the developer/owner of Pu'ulani Ranch Phases I,II and III and that if it is found that burials were intentionally disturbed, that prosecution occur to the fullest extent of the law. (Kahakalau/Harris)

Vote: All in favor

A motion was made that the SHPD follow-up on Debralee Kailiwai-Ray's testimony regarding multiple TMKs at Pu'ulani Ranch and report back to the HIBC on the status and compliance of the adopted burial treatment plans. (Harris/Helbush)

Vote: All in favor

A motion was made that the President of the Pu'ulani Ranch Homeowners Association, Newell Bohnett and Mayor Kim be invited to the July 2006 HIBC meeting at Pu'uanahulu via a letter written by the HIBC Chair. (Kuali'i/Kahakalau)

Vote: All in favor

A motion was made to request the County of Hawai'i Planning Director Chris Yuen's presence at the July 2006 HIBC meeting via a letter written by the HIBC Chair. (Elarionoff/Harris)

Vote: All in Favor

A motion was made to close this agenda item (Elarionoff/Sherlock)

Vote: All in favor

C. CULTURAL DESCENT CLAIM

KEA'AU AHUPUA'A, PUNA DISTRICT, HAWAI'I ISLAND

Information/Recommendation/Determination: Discussion and testimony on the cultural descent claim filed by Mr. Keoni Alvarez. Department recommendation to the Hawai'i Island Burial Council (HIBC) whether to recognize the applicant as a cultural descendant. HIBC determination whether to recognize the applicant as a cultural descendant.

Lindsey referred the HIBC to a June 7, 2006 SHPD staff memorandum recommending Keoni Alvarez be recognized as a cultural descendant to unidentified burials within Kea'au Ahupua'a, Puna District, Hawai'i Island.

Keoni Alvarez (Alvarez) said it has been 11 months since he was last before the HIBC and one year since the SHPD did the site inspection. Alvarez said his family reported the burials 16 years ago.

The State has not flagged it. There is no documentation. The cultural archaeologists Kekipi and Elson Kalawe who have verified that they went in there with Marc Smith.

Alvarez said the HIBC said to keep the remains in place and cap the cave to make sure nobody goes in there. Nothing has been done yet. Alvarez said he went through the process of trying to preserve the burials site before the desecration can even happen. Landowners should not be the ones to desecrate. The landowner wanted to bulldoze and he gave Alvarez the impression that Lindsey told him it was ok. That did not sound right. Alvarez had to get in contact with Melanie Chinen or Lindsey to stop this guy. Alvarez told the landowner that if he comes with a bulldozer he was going to get arrested because it is a known burial. Alvarez spoke with Lindsey and Lindsey said he did not say it was ok. The landowner then said he would not bulldoze, and since then he has been very respectful. The landowner is looking for someone to purchase the property. Alvarez does not think burials should be sold.

Alvarez said he has been on the radio and television. The whole purpose has been to preserve who we are. If we allow these burials to be desecrated, it eliminates our identity.

Alvarez said in doing his family genealogy, he focused on his great great grandfather's side. Alvarez did not know that to be a cultural descendant, he had to prove who he was. He had to prove who his ancestors are. Alvarez said all Hawaiians of old are his ancestors. When he did his genealogy on his Kauai side it was interesting, because they are from Puna and Alvarez connected with them on that side. Alvarez said that as long as they live in the area, they should be cultural descendants. If OHA can agree they are beneficiaries, they have a voice. Alvarez said if they did not live across the street from this burial, it would have been wiped out a long time ago. Alvarez went to OHA to see if they would purchase the property where this entrance is. The cave is part of the burial. That is how he was raised.

Alvarez said OHA asked how he knew a Hawaiian was buried in the cave. That is not right. Alvarez wants to find funding to purchase the property. It is out of respect to preserve the site. The landowner just wants his money back. The State is partially to blame for not flagging the lot. Alvarez strongly recommends capping the cave because the realtors are coming. There is a lot of miscommunications about what Alvarez can and cannot do. There is a lack of funding and the result is going to be many more desecrations because there is no oversight. The bottom line is to preserve and protect for future generations. If any slip ups happen, someone is going to be held responsible.

Alvarez said he has been calling the State every week and has not heard from Lindsey in months so Alvarez had to deal straight with Melanie Chinen. Alvarez thinks he can qualify as a collateral lineal descendant.

Young said the site has been assigned a site number so it will be treated as previously known.

Lindsey said the classification of the site is still in question as to whether it is inadvertent or previously known. Inadvertents are also assigned site numbers.

Alvarez said OHA is challenging that. They feel it is previously identified. We know there is iwi in there and we need to protect the area. It is not right to continually go into the cave.

Kahakalau thanked Alvarez for all the documentation. It is obvious Alvarez did a lot of research. Kahakalau said Alvarez should be recognized as a cultural descendant and the SHPD is recommending that. Kahakalau said there are other concerns that should be on the agenda for the next meeting. Today's agenda just has the descendancy claim. Kahakalau is hearing sealing the cave.

Alvarez said that was the recommendation at the last meeting. It is for the protection of this burial. These landowners are going to run us over. This is the best way to protect it. Who knows how many more burials are in this area. There is another site Alvarez and his mother went to that is wrecked. The ocean rocks are scattered all around. People planted there. Somebody was living there.

Alvarez said he can be recognized as a cultural descendant now and then address his other concerns at the next meeting, it will be another process. It is ridiculous.

Young said the HIBC cannot take action on all the issues that may be of concern because of how the agenda is worded. Cultural descendancy gives Alvarez a bit more weight in his testimony. The HIBC can make a recommend it be treated as previously known.

Lindsey said the HIBC can recommend treatment for any Native Hawaiian burial site regardless of the classification.

Young said the HIBC always treats the whole cave as the burial site and would not approve any construction over the cave or within the approved buffer.

Kahakalau said it has been over a year and the cave is still open and we are still talking about whether it is inadvertent or previously identified. Iwi are threatened.

Hanoa asked how long the cave is.

Alvarez said when the SHPD came to do the investigation, they stopped at the first set of iwi. They are not sure if there are more.

Lindsey asked the HIBC if the description of the site is clear.

Kahakalau said there are two properties.

Lindsey said there could be more.

Alvarez said the cave entrance needs to be sealed so people cannot go in there. The landowner is letting the process go along, but that is not going to last very long.

Lindsey said there is a process that goes with generating an accurate description of a cave. Lindsey said to be honest they day the SHPD went to the cave they were not equipped to do the level of documentation that it takes to generate a map with metes and bounds descriptions. That has not happened to this day. If we are talking about protecting this tube, the HIBC should be aware that the path of the tube is unknown. It crosses multiple properties. Some may have houses, some may not. It is difficult to protect the tube without knowing where it goes. That is an issue the Department has been working with Alvarez on. We are trying to get to the point have having an

accurate metes and bounds description of where the tube goes and what TMK parcels and landowners are affected.

Lindsey would be concerned about the tube entrance being sealed before an accurate description being generated.

Sherlock said it sounds like professionals are going to have to do that work.

Lindsey said licensed land surveyors.

Sherlock said who is responsible for that cost and expense.

Alvarez said Melanie Chinen said they would come in July to see how far the cave goes and do an investigation. Chinen wrote a letter to the State to have someone come out and do that.

Lindsey said the letter Alvarez is referring to is the SHPD requested assistance from another State department who have land surveyors who are capable of generating an accurate description. That department has responded with what they will need for them to help us. What they need from us is currently under review by the SHPD. There were preliminary discussions of when people could get out there but that was all contingent on the SHPD providing what is needed.

Kahakalau said the cave could temporarily be sealed. There are many maha'oi people.

Alvarez said they have not disclosed the exact location of the cave.

Kahakalau said it may not be that hard. People could find out where Alvarez lives and he is across the street from the cave. Kahakalau asked Alvarez how he felt about a temporary seal.

Alvarez whatever to protect what is in there.

Aileen Alvarez said at the last HIBC meeting the recommendation was to cap it and they are still waiting for that to be done. It has been almost a year.

A motion was made to recognize Keoni Alvarez as a cultural descendant to burials in Kea'au Ahupua'a, Puna District within TMK (3) 1-6-091:054 and (3) 1-6-091:multiple and (3) 1-6-090:multiple. (Kahakalau/Hanoa)

Vote: All in favor.

Alvarez said he is trying to get everyone to help out. If he had the money he would put it out.

Aileen Alvarez said this is just a small property and there are burial sites throughout the islands. If we cannot make a change for small burial site, what makes people think they can make a change for large burial sites.

Alvarez said the precedent has been set in the law where it says the Governor and the State can purchase lands but there is no money for these things. We are the ones that get hurt. It is ridiculous.

Young asked Lindsey when the Department will be making a decision on the classification of the site.

Lindsey said the Department will be making that determination after consulting with the Department of the Attorney General. The real question appears to be that when an inadvertent occurs at what point in time, if ever does that classification change. Lindsey is not sure when that will be resolved.

Young said this matter should be back on the agenda in July do the HIBC will be able to make recommendations on how the burial should be treated. If the site is previously identified, the HIBC has more of an ability to provide input. If the site is inadvertent, the State makes that decision.

Lindsey said the HIBC has the ability to make recommendations on the treatment of any Native Hawaiian burial site regardless of classification.

Sherlock said there is a letter from the SHPD to a Ms. Leslie Eversole. Sherlock asked if Eversole ever responded.

Lindsey said the Department initially believed that Eversole was the landowner but that was incorrect. The landowner has been identified as a Mr. Darryl Rapozo. Lindsey said the cave entrance is on Rapozo's property and the cave extends under Anthirium Drive and beneath other TMK parcels.

Lindsey said the Department has notified the 'Ainaloa Community Association and the County of Hawai'i Building and Planning Departments in the event they review any permits related to this area. A challenge is that this area is zoned Agriculture so a grading and grubbing permit may not be necessary. That is not just a problem here but also in Pu'ulani Ranch and down south and on any property zoned agriculture where landowner can potentially bulldoze under one acre and never pull a permit. The idea is that if the Community Association plans improvements in the area or the County reviews a permit on one of these TMK parcels, the existence of the lava tube is considered. Young said at this point the State does not have an accurate map of the site that shows where the burials are and where the tube goes. There is the map that Alvarez has provided.

Lindsey said the problem is that if you are going to a landowner to tell them about the tube and the burials under their house and you want to record the existence of the property as an encumbrance on the property deed in the event the property is sold, Lindsey would anticipate that landowner wanting proof. That is where the licensed land surveyor comes in because you are generating a document that shows an accurate depiction of the cave.

Young said the issue should be back on the agenda next month.

Jean Rasor (Rasor) said that if this landowner has been notified about the iwi in the cave and does anything to harm those iwi that puts him in the position of potentially violating the law. Rasor asked if there is another entrance to the cave.

Saffrey said the entrance to the cave is on Rapozo's property, the iwi are beneath another property.

Aileen Alvarez said the entrance is considered part of the burial site.

Alvarez said the entrance is how you go into the cave and get access to the iwi.

A motion is made to close this agenda item. (Kahakalau/Sherlock)

Vote: All in favor

The HIBC meeting was recessed for lunch at 12:35 p.m.

The HIBC meeting was reconvened at 1:14 p.m.

**D. BURIAL TREATMENT PLAN FOR THE KALOKO HEIGHTS PROJECT
KALOKO AND KOHANA'IKI AHUPUA'A, NORTH KONA DISTRICT, HAWAII ISLAND
TMK (3) 7-3-009:032**

Information/Recommendation/Determination: Discussion of the burial treatment plan. Department recommendations to the HIBC whether to recognize applicants as cultural descendants to burials within the project area. HIBC determination to recognize applicants as cultural descendants to burials within the project area. HIBC determination to preserve in place or relocate the burials within the project area. HIBC recommendations to the Department on the short and long term preservation and protective measures detailed in the burial treatment plan.

Lindsey said that this plan is on the agenda for a second time for a determination and that this is the last regularly scheduled meeting within the 45 day statutory timeframe for a determination to be made by the HIBC.

Lindsey said at the conclusion of the May meeting there were four major issues that he understood needed to be resolved prior to this meeting.

The first were allegations of 6E violations occurring within the project area. The SHPD has requested that DOCARE initiate an investigation into those allegations. Lindsey said he is not privy to the status of or the procedures used to conduct that investigation. The matter has been routed to the appropriate authority.

Second were questions about landownership relative to this TMK parcel. The SHPD has consistently been advised by the Department of the Attorney General that landownership is not an issue the HIBC has jurisdiction to determine. If there are concerns, determinations and recommendations could potentially be made contingent on landownership issues being resolved.

Third were concerns regarding undocumented burial sites within the project area. The SHPD is willing to review and assess any information related to those concerns. Lindsey said he has not had the opportunity to meet with those who may have that information, but is willing and would look forward to the opportunity to do so.

The fourth issue was questions over whether the burial treatment plan was in compliance with the Hawaii's Administrative Rules. Specifically, whether an appropriate good faith effort had been conducted in the research of relevant land conveyance documents in an effort to identify potential lineal and or cultural descendants. The SHPD discussed this matter with the Department of the Attorney General and maintains that the required good faith effort was conducted and that the burial treatment plan is in compliance with the rules.

Young asked if the burial treatment plan was in compliance with just that one section of the rules.

Lindsey said the plan is in compliance with all of the rules.

Elarionoff asked what happens if all the issues are not resolved. Does that mean the plan is approved.

Lindsey said depending on the circumstances, if no determination is made today, the Department could potentially go back to the applicant and request a voluntary extension of the statutory timeframe. Absent that extension, if precedent holds, the Department would make the determination.

Elarionoff asked if that means the families have no say.

Lindsey said the proposal is for preservation in place and he has not heard anyone opposed to that proposal. Lindsey said he would not anticipate a decision by the Department contrary to that proposal. The families have a say.

Elarionoff asked how the issue of the delineation of easement boundaries by ti or a rock wall will be resolved.

Lindsey said after the determination, the HIBC can still make recommendations regarding the ti or rock wall delineation. By statute, the Department has 90 days from when the HIBC makes their determination to approve the final details of a preservation plan.

Young asked if there is a timeframe for the 6E violation investigation.

Lindsey said he is not privy to that information.

Young asked if there is an investigation ongoing.

Lindsey said he is aware that the SHPD issued a request to DOCARE to conduct an investigation into those allegations.

Young asked if there is a reasonable suspicion that there is a hole in the title for this property.

Lindsey said he cannot answer that question.

Young asked if the State is looking into that issue.

Lindsey said not that he is aware of.

Young said the persons who said there are undocumented burials on the property said they would provide Lindsey with that information. Young asked Lindsey if he has been provided with that.

Lindsey said he has not, but has not actively sought them out.

Young said his recollection was that it was going to be provided to the Department.

Paul Kay (Kay) of Stanford Carr Development introduced himself to the HIBC. Kay said they are waiting to hear back from the descendants on certain issues and will continue to seek that.

Elarionoff asked Kay if they are before the County Council on their subdivision application.

Kay said no. They have had a multi lot subdivision approved and recorded and all zoning requirements have been in place since 1983. Before they can get a grading permit, the SHPD needs to sign off. The SHPD will wait for a burial treatment plan before that takes place.

Kahakalau said at the last meeting the HIBC made recommendations. Kahakalau asked what happened with those recommendations.

Kay said the biggest issue was ti or rock wall delineation of the burial easements. Kay said they want to hear from the recognized descendants.

Kahakalau said there were other issues like how Site 10736 should be treated, significantly increasing the buffer. Normally those recommendations are addressed in a revised plan.

Kay said they did not think a revised plan is necessary at this point. They have not ignored the recommendations.

Kahakalau asked if they have discussed increasing the buffer around Site 10736.

Kay said they have discussed it and it is addressed in the preservation plan. The buffer on the makai side of the heiau will be 50 feet. Once the easements are established, the buffer will be larger as well.

Kuali'i said a lot of the recommendations made at the last meeting are very important. Kuali'i said as Kahakalau mentioned, normally a revised plan is submitted. Kuali'i said he is afraid the recommendations will be ignored.

Kay said the recommendations will not be ignored. The SHPD has 90 days to review the recommendations and incorporate them into the final plan.

Kuali'i asked if the HIBC will be involved during the 90 day process to approve the final preservation plan. Monitoring is very important.

Lindsey said normally when the HIBC makes their determination, the SHPD sends a letter to the applicant notifying them of the determination and then lists the HIBC recommendations the SHPD concurs with. It is those recommendations the SHPD will want to see incorporated into the final plan. Lindsey said there have been cases of the HIBC wanting to see that final plan before it is approved. The HIBC has the ability to stay involved with the process related to any Native Hawaiian burial sites.

Kuali'i asked if the HIBC needs to formally request to be involved in the process.

Lindsey said the HIBC could make a motion in that regard.

Kuali'i asked Kay if they will be blasting with dynamite.

Kay said the answer is still that they do not know. They do not have detailed engineering plans. Monitoring was incorporated into the preservation plan for the project. It is a monitor per machine. Kay said they are making sure that subdivision roads run up to the burial sites to ensure access and no construction work will occur within the preservation easements.

Kahakalau said other issues were the signage, short term buffers and the potential for inadvertents. Kahakalau said she would feel much more comfortable if there was something in writing acknowledging the previous HIBC recommendations.

Young said the HIBC can make those recommendations a condition of the approval of the plan and can request to see those recommendations incorporated.

Kuali'i said he appreciates the construction plans being contingent upon the buffers around the sites.

Sherlock asked about the status of the 50-100 undocumented burials.

Kay said it is his understanding that information was going to be provided by the people who have it.

Young said last month people mentioned they thought there were additional burials within the project area and would be providing that information to Lindsey. If the HIBC requires more information on that issue it can be conditioned in a recommendation. Young said he is concerned when he reads the minutes and people are saying they are the landowner and know there are more burials. It is clear what the descendants are saying. There is a landownership issue and they believe there are more burials. Because we have not found them, does not take away from the fact that the burials are there.

Young said in the rules, the HIBC can request any project plans including, but not limited to construction and grading plans. Young said they should have those available and they don't.

Harris said Kay has shown a conceptual development plan and how they are going to establish the preservation easements. Harris said doing the archaeological and the preservation plan first, and then showing the detail around the sites is the correct way to do it. If you are saying that the applicant should submit detailed construction and grading plans first you are telling the developer to waste money. You should set the buffers around the preservation sites as close as you can and then design around them. That is the sequence that is most logical to Harris.

Young said the ability for the HIBC to request the detailed plans is in the rules. There must be a reason for that. The idea is to get as much information as possible. This goes back to working closely with the County.

Harris said the idea is to protect the iwi with the best information available.

Elarionoff said what Harris said is true, but then a case like Pu'ulani Ranch throws everything down the tubes.

Harris said that is because there are people who don't follow the law and do what they say they are going to do. This is a new project. The HIBC should discuss how to follow up on compliance with burial treatment plans. It gets complicated.

Saffrey said the May HIBC minutes show that people have information about undocumented burial sites within the project area. If Lindsey has not received that information, who is responsible for tracking it down. Saffrey does not want this issue to be disregarded.

Young said there are people in the audience who will testify on that matter.

Iwalani Arakaki (Arakaki) introduced herself to the HIBC.

Janet Nenio (Nenio) introduced herself to the HIBC.

Arakaki said there are many issues that have been weighing on her. She did not know how to approach it. The family owns the land from mauka to makai. The deed shows the boundaries, that is why she questioned this all the way. This is her 'ohana. Genealogy is a part of her life.

Kuali'i asked Arakaki if she would be willing to work with the developer on the details of the plan.

Arakaki said as long as the developer does the right thing, the family is satisfied. Arakaki said she does not want to do anything by herself, the family needs to sit down and come together.

Hanoa said it would be good for Arakaki to sit down and kuka with the developer.

Elarionoff said Arakaki needs to tell the developer what is right, what is pono. As Hawaiians, we tell people to do what is right, but don't explain what right is.

Arakaki said the way she was brought up, before anything is done the family comes together and comes to a decision. No more hakaka.

Elarionoff said we know what is right. The world has changed. Not everyone thinks like we do. We need to be more demanding.

Arakaki said if she needs to be more demanding, she will be.

Saffrey said Arakaki's information needs to be shared with the developer. They don't know what has been given to the HIBC, and the HIBC is not privy to share it. It is family information. It needs to be shared, so the developer understands.

Kahakalau said one thing being discussed is how much of a buffer around the sites and whether the sites will be marked with pohaku or la'i. Signs is another issue. What ever conclusions the family come to should be provided to Lindsey so he can provide them to the HIBC. The HIBC's kuleana is to make sure what the families want happens.

Kuali'i said it is important for Arakaki to work with the developer.

Norman Gonsalves (Gonsalves) introduced himself to the HIBC. He has gone through the project area extensively and has not even scratched the area. The trail through the project was used by many people and was the main trail to the sea. They have interviewed many kupuna from the area. There are many burials on either side of the trail. Gonsalves said he has heard the trail will be realigned. Gonsalves is opposed to realigning the trail.

Gonsalves distributed certain documents and photographs to the HIBC for review.

Gonsalves said there are multiple burials in the area, yet the burial treatment plan only shows a limited amount of burials. In the Hulimai homestead lot, there are two sites that were recently dug up. The area was cleaned out. There were no iwi or artifacts. There were multiple burials.

Gonsalves asked if the burial treatment plan supersedes Federal Law.

Chow said no.

Gonsalves said his documents show who the lineal descendants are. There are maps that show the names. His people do not need to go to school to know what a burial looks like. They were taught by their kupuna. They have been all around the island doing this kind of work. The HIBC needs to take a look at what is going on here. Gonsalves said his team would be more than happy to take the State into these areas. Gonsalves said his group “Kahu o Kahiko” does research. The burials are all along the trail.

Nazara asked Gonsalves what the name of the trail is.

Gonsalves said the “Road to the sea” or “Na wahi ahu”.

Kahakalau said at the May HIBC meeting there was testimony that information regarding undocumented burials was going to be presented. Kahakalau asked if it is possible to provide that information.

Gonsalves said he would be happy to provide a report.

Kuali'i left at 2:23 p.m. quorum was maintained.

Gonsalves said they found burials around all the lama trees.

Saffrey asked if it is Gonsalves intent to share the information with the developer.

Gonsalves said they have not completed their investigation. When they do, it will be shared. The kupuna are coming forward with additional information. All they can do is present the information.

Young said the only information the HIBC has been provided thus far has been from the developer. That information has a limited amount of burial sites. Without the information Kahu o Kahiko has, the HIBC is in a position of not being able to make a decision on information they know nothing about. That information needs to get to the State, so those findings can be validated. The HIBC is taking Gonsalves information as oral testimony but it is not site specific.

Gonsalves said the concerns of the kupuna stating there are burials should be enough. Gonsalves said he is only providing information, not changing policy. This is not the only place they are looking at.

Nazara said if the intent is to protect, the information needs to be specific and given to the State and the developer.

Gonsalves said they have not concluded the investigation. He does not want to give a half story. They hope to conclude it in a week or two.

Elarionoff asked Gonsalves how he knows iwi and artifacts were removed.

Gonsalves said because they are not there. There were remnants of iwi, but the rest are gone. The area was freshly dug.

Tyler said the HIBC should not make a determination today, but if they have to, the iwi should be preserved in place with the provision that the burial treatment plan is incomplete because it is not in compliance with the rules.

The plan is incomplete because there has been no follow up on the undocumented burial sites, only lots of questions for Gonsalves. The HIBC cannot make a determination until the investigation into 6E violations is concluded. The HIBC has the authority to request additional archaeological inventory level testing. Gonsalves has said they have precise locations.

The SHPD's acceptance of this plan is based on incomplete information provided to the SHPD and the HIBC. There is not complete information on the lineal and cultural descendants. Information has been omitted. The most prominent example is the omission of the Ha'o family. Ha'o was the konohiki of the area.

There are no maps showing the location of the burial sites and the spatial relationship between the sites and construction activities drawn to scale. The reason that is there is because of the cultural landscape. The HIBC can also request construction and grading plans. Tyler said Kay has said these plans are not available. Tyler said all the HIBC has to do is request them. Tyler has told the HIBC on two occasions to request the archaeological inventory survey. If the HIBC does not have the inventory survey, they do not have complete information. The Council can request any information deemed necessary to make a fully informed determination. If the Department cannot provide the information, the matter should not be on the agenda.

Tyler does not think this project has been designed around the traditional cultural properties present on the parcel. One of those is Site 10714, the "Road to the sea". The Land Board has been asked by the developer's representative to realign the trail and to be given a quit claim deed over this public asset. The burials that have been documented by Woforth are very close to this trail.

There are no provisions within the plan for recordation of burial easements which are normal in burial treatment plans. Tyler suggested the developer agree to a 60 day extension of the timeframe for the HIBC to make a determination to allow the DOCARE investigation to be completed, the SHPD to review the information related to 50-100 undocumented burials and for the HIBC to review the requested information.

Tyler said he is not opposed to this development, but the HIBC does not have the information needed to make a determination. The SHPD is required to provide the information detailed in §13-300-33(b) of the Hawai'i Administrative Rules, and it is not the HIBC's fault they did not do that. No burial treatment plan should be agendized until the plan is in compliance with the rules.

Rasor said they presented maps at the April meeting that show the trail with the names on the 1891 map. There are burials along the trail.

Wolforth said they have seen the maps, they are in the inventory survey.

Lindsey asked if the maps are new information.

Wolforth said no, they are reprinted in the inventory survey.

Rasor said the names are absent. It is not that hard to run another ad in the newspaper. Give the other lineal and cultural descendants a chance to respond. Rasor asked if the names on the 1887 and 1891 map are insignificant.

Wolforth said he used the map when they published the notice. Only a small portion of the homestead is within the project area. The names within the project area were in the notice.

Rasor said the homestead is a village.

Young said all the names within the ahupua'a should be in the notice, not just the names within the project area.

Lindsey said that may be culturally appropriate.

Wolforth said he had to draw the line somewhere.

Kahakalau said a kauhale is a village, it would be obvious to include all the names from the village. The whole ahupua'a is another story.

Wolforth said the responses to the notice resulted in different people associated with the entire homestead getting in contact and being consulted.

Young asked Wolforth if he determined that the features Gonsalves and Rasor are saying are burials are not burials.

Wolforth answered correct.

Harris asked what the disposition of the trail is.

Kay said the inventory survey deemed the trail is not significant, but passed on their discussions with the families of the area, including the Punihaoles they are trying to realign the project roads to preserve certain segments of the trail. Despite the official designation of no preservation, they are working on plan.

Harris asked if there are questions on the alignment.

Kay said yes, but there is a general consensus that it follows the depiction shown in figure 3 of the plan. The only way to know for sure is to survey the trail which cannot happen until the property is grubbed.

Rasor said he spoke with Melanie Chinen who referred him to Curt Cotrell.

Chow said when a trail falls under the 1892 law it is considered State property. The developer needs to work with the Na Ala Hele program to determine how the trail will be addressed.

McDonald referred to a May 23, 2006 letter from the Na Ala Hele Advisory Council to Irving Kawashima of Na Ala Hele which discussed the Road to the Sea. The Advisory Council voted to deny the State quit claiming the trail and should be kept in public ownership.

McDonald said page 9 of the burial treatment plan says the caves will be sealed so no one can enter yet page 26 proposes reinterment of inadvertent burials within certain burial caves. This seems to be a contradiction. McDonald said the maintenance section on page 26 of the plan refers to consulting with lineal descendants. There are no lineal descendants at this time.

Dela Cruz said he feels like this is similar to Honokohua. Honokahua started with preserving the ala nui, the iwi came up and the kupuna spoke to us. Here is a trail again.

Kahakalau said she does not feel good about what she has been hearing. It does not make sense that there would be only seven burials in this area. The HIBC should be requesting additional testing and requesting the archaeological inventory survey. There are unanswered questions. We should talk about an extension.

Young asked Kay if he would agree to an extension request.

Kay said that they would not ignore the request, but at this point would not be inclined to grant it. There is the additional 90 day period for the approval of the final preservation plan.

Kahakalau asked Chow if the HIBC can request the information detailed in §13-300-33(b) of the rules.

Chow said in this case it appears that the requests for that information prior to a HIBC determination should have been made at an earlier meeting.

A motion was made to preserve in place the burials within Sites 10701, 10717, 10722, 10728, 10736, 10740 and 10754. (Young/Harris)

Vote: All in Favor

A motion was made that the burial treatment plan appears incomplete because the HIBC has not been provided all the information and that prior to the approval of a grading permit, the HIBC shall be provided a copy of the archaeological inventory survey, results of additional archaeological testing as per the sites Kahu o Kahiko have outlined and that all the information outlined within 13-300-33, HAR be provided to the Council. (Young/Saffrey)

Harris said the HIBC can request that information but it is hard to define what additional archaeological testing we are talking about. The detailed construction plans are also a tricky thing. It could be more of a conceptual grading and construction plan near the cultural sites. The Council is also asking for the Preservation Plan.

Helbush asked if the information can be provided.

Dela Cruz and Nazara left at 3:42 p.m. quorum was maintained

Kay said he cannot provide construction plans until he knows what the buffers around the sites will be.

Young said the HIBC is asking for as much information as possible within the timeframe. The HIBC will not settle for no information.

Lindsey said he is prepared right now to go through §13-300-33(b)(1-14) right now to explain why he accepted the plan was in compliance. Lindsey said he regrets Tyler had to leave, but is ready to go through the rules right now with the HIBC.

Vote: All in Favor

A motion was made to recommend:

- the permanent buffer zone around Site 10736 be increased to 100 feet in all directions measured from the edge of the feature.*
- the interim buffers around all sites be increased to 100 feet in all directions instead of 50 feet.*
- the language on any signage and the parameter delineation of ti leaves or rock walls be discussed and agreed upon by the descendants.*
- the wording within the “Maintenance” section of the burial treatment plan on page 26 be revised to state “lineal and cultural descendants”.*
- that clarification on the ownership and maintenance responsibilities for burial easements be provided*
- that one monitor for each machine operating on the parcel be required.*
- that prior to the SHPD approving a grading and grubbing permit, the HIBC updated on the status of a final preservation plan for the burials.*
- that all recommendations from the HIBC May and June meetings be in the HIBC minutes and reflected in the final preservation plan for the burials.*
- that specifics and clear guidelines regarding “blasting” be provided.*
- the HIBC strongly recommended that the Site 10714, the “road to the sea” trail be entirely preserved.*
- that recordation of the burial easements be confirmed prior to final subdivision approval.*

Kahakalau/Saffrey

Vote: All in Favor

A motion was made that all inadvertent discoveries within the project be classified as previously known. (Kahakalau/Saffrey)

Roll Call Vote:

Roger Harris: Nay

Dutchie Saffrey: Aye

Roy Helbush: Nay

Pele Hanoa: Aye

Charles Young: Aye

Ulu Sherlock: Aye

Leningrad Elarionoff: Aye

Ku Kahakalau: Aye

6 ayes against 2 nays, the motion carried

A motion was made to close this agenda item. (Sherlock/Saffrey)

Vote: All in favor

E. HAWAI'I VOLCANOES NATIONAL PARK DETERMINATION THAT FIVE ITEMS IDENTIFIED AS ORIGINATING FROM A CAVE IN KAWAIHAE, SOUTH KOHALA, HAWAI'I ISLAND KNOWN AS "FORBES CAVE" ARE UNASSOCIATED FUNERARY OBJECTS AS DEFINED BY THE NATIVE AMERICAN GRAVES AND REPATRIATION ACT (NAGPRA)

Information/Recommendation/Determination: Discussion of the recent determination by Hawai'i Volcanoes National Park on the NAGPRA category for the five items from the "Forbes Cave" currently in the possession of Hawai'i Volcanoes National Park which is detailed in a May 18, 2006 letter with attachments. Discussion of the history of "Forbes Cave".

Lindsey referred the HIBC to a May 18, 2006 letter from the Hawai'i National Park Letter which was included in the HIBC mail packet.

Keola Awong (Awong) of Hawai'i Volcanoes National Park said that since the media coverage detailing the determination that the items are unassociated funerary objects, two additional claimants have come forward. The Park now needs to take their information and make a determination and then call for another round of consultation.

Elarionoff said he has a problem with referring to the cave as "Forbes Cave".

Awong said in their press release they referred to the cave as a lava tube in Kawaihae.

Young asked if the HIBC needs to formally move to be a claimant in the NAGPRA process.

Awong said the HIBC is a claimant as a Native Hawaiian Organization. The Park needs to look and see if there are any lineal descendants based on how lineal descendants are defined by NAGPRA. One of the two new claimants is saying he is a lineal descendant so they need to check on that.

Young asked if the other claimants will be formally notified that there are other claimants.

Awong said all the claimants will know who is involved.

Kahakalau asked if NAGPRA addresses keeping collections together.

Awong said it is case by case based on the institution it is coming from. Awong said all of the claimants involved with the Bishop Museum repatriation need to provide the same level of documentation with the Park.

Harris asked who the two additional claimants are.

Awong said the lineal claimant is William Ho'ohuli. The Native Hawaiian Organization is Ho'oulu Lahui, Keiki Kekipi.

Saffrey said more could come forward.

Awong said yes, the process is not closed.

A motion was made to close the agenda item. (Sherlock/Hanoa)

Vote: All in favor

A motion was made to defer the remainder of the HIBC agenda items. (Saffrey/Sherlock)

Vote: All in favor

A motion was made to adjourn the HIBC meeting. (Saffrey/Sherlock)

Vote: All in favor.

The HIBC meeting was adjourned at 4:39 p.m.